

UNITED STATES COURT OF APPEALS

APR 8 1998

TENTH CIRCUIT

PATRICK FISHER
Clerk

ROBERT DALE LARSEN and DIANE
KATHRYN LARSEN,

Plaintiffs - Appellants,
v.

GARY A. WARNER, Internal Revenue
Service Revenue Officer; ROY H.
YURT, Internal Revenue Service
Manager; WALTER A. HUTTON,
Internal Revenue Service District
Director; RITA MAYFIELD, Sheridan
State Bank, New Accounts
Representative; TOM GLIGOREA, First
Federal Savings Bank, CEO; MARK
HENDRICKSON, Sheridan State Bank,
President and CEO; GLENDA K.
JELLIS, Internal Revenue Service
Revenue Officer; CATHY A. FORTIER,
Secretary, First Federal Savings Bank;
UNITED STATES OF AMERICA,

Defendants - Appellees.

No. 97-8100
(D.C. No. 97-CV-1033-J)
(District of Wyoming)

ORDER AND JUDGMENT*

*The case is unanimously ordered submitted without oral argument pursuant to Fed. R. App. P. 34(a) and 10th Cir. R. 34.1.9. This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

Before **ANDERSON, MCKAY** and **LUCERO**, Circuit Judges.

We assume jurisdiction in this case pursuant to 28 U.S.C. § 1291, and conclude that the appeal is timely under Smith v. Barry, 502 U.S. 244, 248-49 (1992) (“If a document filed within the time specified by Rule 4 gives the notice required by Rule 3, it is effective as a notice of appeal.”).

By three separate orders filed on September 18, 1997, the district court dismissed plaintiffs’ complaint against all defendants. The district court’s dismissal was without prejudice, however, so that the plaintiffs could file an amended complaint to correct the defects in the initial filing identified by the district court. The court’s orders specifically informed the plaintiffs that failure to file an amended complaint within ten days from the filing of the orders would necessitate dismissal with prejudice. After the plaintiffs failed to properly and timely amend their complaint, the district court dismissed the complaint with prejudice.

We have reviewed the plaintiffs' appeal and conclude that it is without merit. For substantially the reasons set forth by the trial court in its orders filed September 18 and October 10, 1997, the judgment is AFFIRMED.

The mandate shall issue forthwith.

ENTERED FOR THE COURT

Carlos F. Lucero
Circuit Judge